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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,504	06/06/2005	Robert Ungemach	P05841US00	1298

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MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES, IA 50309-2721

EXAMINER

PETRIK, KARI KRISTEN

ART UNIT PAPER NUMBER

3743

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/523,504	Applicant(s) UNGEMACH ET AL.	
	Examiner Kari Petrik	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/13/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 2/13/2006 has been received and made of record. As requested, claims 1 and 10 have been amended.
2. Claims 1-17 are pending in the instant application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Vilsmeier et al (US Patent 5,702,406). Vilsmeier et al disclose a patient restraint member comprising a sheet of thermoplastic material (10) having spaced apart groups of perforations and solid bands extending between the groups of perforations and extending at least partially across the sheet (Figure 1A). Vilsmeier et al. also disclose a sheet having a perimeter edge (see Figure below) and being free of additional strips of material (sheet 10 itself is free of additional strips and is capable of being used alone to restrain the user). The restraint has a U-shaped frame (40) attached to and extending around at least a portion of the perimeter edge of the sheet. The restraint member (i.e., sheet 10) has only a single layer of thermoplastic material throughout.

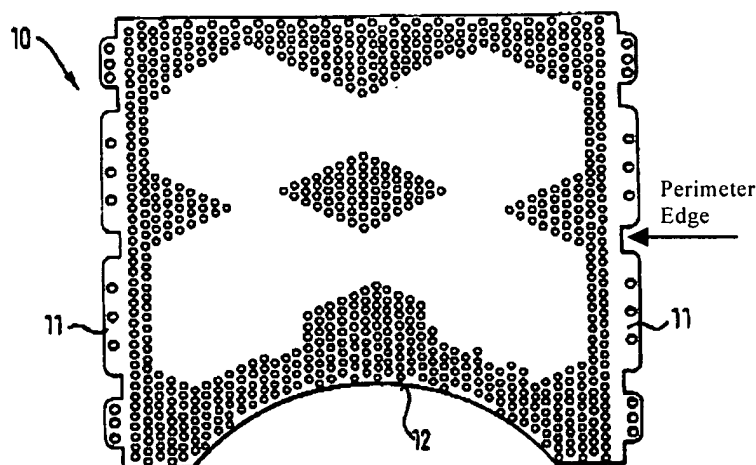
Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-8 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier (US Patent 5,702,406). Vilsmeier et al discloses a thermoplastic sheet (10) having groups of perforations and solid bands extending across the sheet between the groups of perforations to provide rigidity (Figure 1A). The solid bands criss-cross the sheet and intersect at a location spaced inwardly from the edge. Vilsmeier et al also discloses a thermoplastic sheet having a non-perforated edge (the arrow in Figure 1A below is considered a non-perforated edge). Vilsmeier et al do not disclose that the solid bands extend completely across the sheet, and do not disclose that they extend in a perpendicular or non-perpendicular angle from the perimeter edge.

FIG. 1A



However, a thorough reading of the specification provides no criticality to the arrangement of the bands. Specifically, Applicant has not disclosed that having bands that extend from the perimeter edge at a perpendicular angle or non-perpendicular angle provides an advantage over bands extending through the sheet at any other angle.

At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the thermoplastic sheet with the varying solid band configurations, because Applicant has not disclosed that such configurations provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Vilsmeier et al.'s thermoplastic sheet and Applicant's invention to perform equally well with either the solid bands used by Vilsmeier et al, or the various claimed designs of solid bands and perforations because both configurations would perform the same function of providing rigidity.

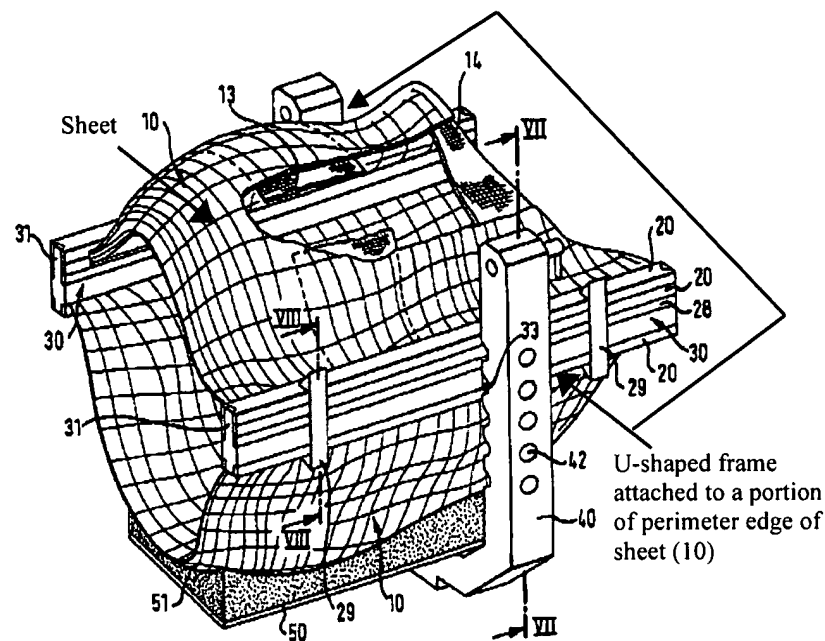
Therefore, it would have been *prima facie* obvious to modify Vilsmeier et al to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Vilsmeier et al.

Response to Arguments

7. Applicant's arguments filed 2/13/2006 have been fully considered but they are not persuasive.

8. Applicant argues that the Vilsmeier patent does not disclose a U-shaped frame attached to and extending around a portion of the perimeter edge of the sheet.

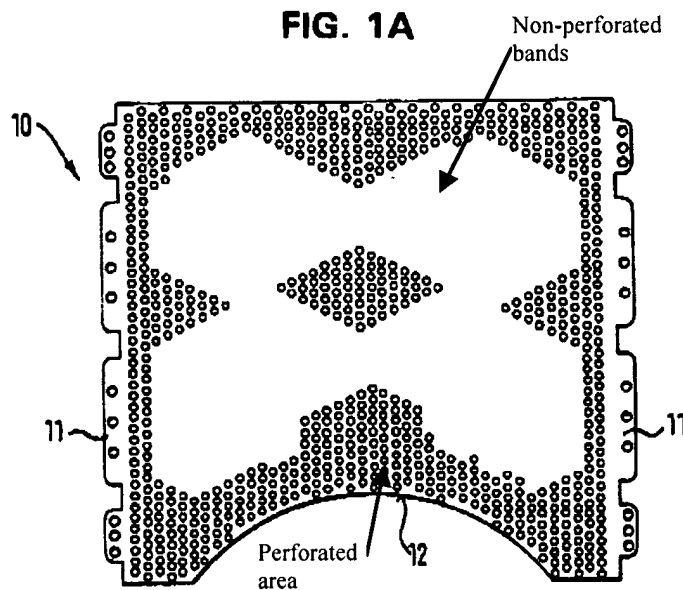
Applicant disagrees because the Vilsmeier reference does show a U-shaped frame (40) attached to and extending around at least a portion of the perimeter edge of the sheet (see Figure below).



9. The Applicant argues that the Vilsmeier patent does not meet the claim limitation of a sheet that is free of additional strips of material and wherein the restraint member has only a single layer of thermoplastic material throughout. The examiner disagrees because the reference does show a sheet member that is free of additional strips (10, Figure 1A). The sheet itself does not have additional strips and is fully capable of being used as the restraint member, a single layer.

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10. The Applicant argues that the Examiner's interpretation of Figure 1A is incorrect in that the non-perforated areas shown are merely a drawing convention so that the draftsman need not draw the holes across the entire area of the sheet. The Examiner spoke with Joshua Chase at the USPTO Drafting Review Branch who stated that this is not a drawing convention, and that the figure does show a sheet having a perforated area and a non-perforated area.



11. The examiner directs the Applicant to MPEP § 2125. Specifically, "When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawing must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art". Even though the non-perforated area is not described in the specification, the figure clearly shows the sheet having a perforated area and a solid non-perforated area, and therefore, it can be used as prior art.

12. The Applicant argues that the reference explains the thermoplastic material being perforated in a netlike manner and that a net does not have solid bands of non-perforated material. The Vilsmeier reference does not state that the sheet must have a netlike pattern across the entire area of the sheet. Figure 1A shows a sheet that has perforations in a netlike manner on only portions of the sheet.

13. In response to Applicant's argument regarding the dependent claims, stating that the 103 rejection is improper since it does not create a *prima facie* case of obviousness, the examiner disagrees. Vilsmeier discloses a sheet member having a perforated area and solid non-perforated bands, as discussed in paragraphs 9-12. A thorough reading of the specification provides no criticality to the arrangement of the bands. Specifically, Applicant has not disclosed that having bands that extend from the perimeter edge at a perpendicular angle or non-perpendicular angle provides an advantage over bands extending through the sheet at any other angle.

14. At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the thermoplastic sheet with the varying solid band configurations, because Applicant has not disclosed that such configurations provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Vilsmeier et al.'s thermoplastic sheet and Applicant's invention to perform equally well with either the solid bands used by Vilsmeier et al, or the various claimed designs of solid bands and perforations because both configurations would perform the same function of providing rigidity.

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15. Therefore, it would have been *prima facie* obvious to modify Vilsmeier et al to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Vilsmeier et al.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is (571)272-8057. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KKP
KD



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Group 3700